

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

DIVISION: 6

HON. THOMAS B. LINDBERG

CASE NO. P1300CR20081339

JEANNE HICKS, CLERK

By: Rachel Roehe, Deputy Clerk

DATE: April 28, 2010

FILED

DATE: April 28, 2010

5:34 O'Clock P.M.

JEANNE HICKS, CLERK

**BY: Rachel Roehe
Deputy**

TITLE:

STATE OF ARIZONA

(Plaintiff)

vs.

STEVEN CARROLL DEMOCKER

(D-1)

COUNSEL:

Yavapai County Attorney (e)

(For Plaintiff)

John Sears (e)

Larry Hammond & Anne Chapman (e)

OSBORN MALEDON, P.A.

(For Defendant)

HEARING ON:

Voluntariness Hearing / Pending Motions / Jury Selection Issues

NATURE OF PROCEEDINGS

COURT REPORTER

Roxanne Tarn

START TIME: 9:08 a.m.

APPEARANCES: Joseph Butner, Deputy County Attorney
Jeff Paupore, Deputy County Attorney
Steven DeMocker, Defendant
John Sears, Counsel for Defendant
Larry Hammond, Counsel for Defendant
Anne Chapman, Counsel for Defendant

Jury Selection Issues

Discussion takes place with regard to potential jurors. The Court informs the parties that it has excused and replaced some jurors, but left some for discussion this morning.

Discussion takes place with regard to juror #254476. This juror is not dismissed at this time.

Discussion takes place with regard to juror #252983. There being no objection, the Court directs the Jury Commissioner to excuse this juror.

Discussion takes place with regard to juror #264909. There being no objection, the Court directs the Jury Commissioner to excuse this juror.

Voluntariness Hearing

The Court notes that this is the time set for the voluntariness hearing with regard to the statements made on October 23, 2008.

Detective McDormett is designated as the State's investigator.

The rule excluding witnesses is invoked.

Luis Huante, David Rhodes and John McDormett are sworn.

Luis Huante testifies.

The witness is excused.

David Rhodes testifies.

Exhibit 171 is offered by the State. The Exhibit is admitted for purposes of this hearing over objection by Defense Counsel.

The witness is excused.

John McDormett testifies.

The witness steps down.

Counsel present argument.

The Court finds that the statements made during the course of the proceedings are voluntary and admissible in the State's case in chief if they are relevant. The Court **GRANTS** the motion of the State with regard to voluntariness of the Defendant's statements made on October 23, 2008.

~*~*~*~*~ Recess – 10:36 a.m. ~*~*~*~*~

At 10:50 a.m., Court reconvenes with the presence of all parties previously present.

Motion with regard to the manner of reporting DNA results

Counsel argue the motion.

The Court asks that both sides be careful about the expression of the issues during testimony regarding scientific and DNA evidence. The Court **DENIES** the Defense motion in connection with their request.

Motion with regard to Knapp evidence

Counsel argue the motion.

The Court states that it does not have sufficient evidence to grant the motion at this time. The Court, therefore, **DENIES** the motion.

~*~*~*~*~ Recess – 12:00 p.m. ~*~*~*~*~

At 1:32 p.m., Court reconvenes with the presence of all parties previously present.

Jury Selection Issues

Discussion takes place with regard to potential jurors.

Discussion takes place with regard to juror #252138. The juror is not excused at this time and the Court notes that accommodations will be made with regard to his conflict.

Discussion takes place with regard to juror Steven Jaynes. There being no objection, the Court directs the Jury Commissioner to excuse this juror.

Petition for Special Action

Discussion takes place regarding the petition. Counsel inform the Court that the petition was filed this morning.

Motion to Dismiss Aggravating Factor and Motion to Dismiss Death Penalty

Counsel argue the motion regarding sanctions.

The Court states that it does not believe that it is inappropriate for this Court to hear the motion. The motion for sanctions is **DENIED**. The Court does not find a sufficient basis in the record to make any kind of finding that there was prosecutorial misconduct in the filing of the motion.

Counsel argue the motion to dismiss.

The Court **DENIES** the motion to dismiss that aggravating factor.

Jury Selection Issues

A revised lineup of prospective jurors is provided to the parties from the Jury Commissioner's office.

There being no objection, the Court directs the Jury Commissioner to dismiss the juror numbered 84 on that list.

Motion with regard to the F6 aggravator and matters related to the cruel/depraved aspect

Counsel argue the motion.

For the reasons set forth on the record, the Court **DENIES** the motion in part and **GRANTS** the motion in part. The Court states that it does not order precluding the State from bringing forth evidence of the observations by Dr. Keene on the autopsy or by Dr. Fulginiti in her examination and evaluation or descriptions of what was found in terms of the victim's physical condition and the physical condition of the house at the time of the victim's death.

Counsel continue to present argument.

~*~*~*~*~ Recess – 3:09 p.m. ~*~*~*~*~

At 3:24 p.m., Court reconvenes with the presence of all parties previously present.

Motion with regard to sequestered jury and closed courtroom during voir dire

Counsel argue the motion.

The Court states that it does not find that closure of the Courtroom is necessary to protect the Defendant's fair trial rights or that there is an overriding interest that would likely result in prejudice if *voir dire* takes place when media may be present in the Courtroom. The Court is not prepared to shut the jury selection process to the media at this time.

Discussion takes place with regard to the juror's identity being protected from the media.

The Court states that it would consider entering an order for all media to sign off on to prohibit them from disclosing identifying information of the jurors. The court notes that it has already entered orders prohibiting photographing or filming members of the jury.

Motion to preclude shoeprint evidence

Counsel argue the motion.

The Court clarifies its previous ruling with regard to the shoeprint evidence. The Court states that it will not allow the witness to state that they are unable to see differences in the prints.

The Court **DENIES** the motion to preclude the testimony of the experts pursuant to Rule 702 without prejudice. The State shall keep the Court advised in terms of when Mr. Gilkerson and Mr. Hoang may testify so that a brief hearing may be conducted outside of the presence of the jury for the Court to be satisfied that there is sufficient scientific basis under Rule 702 to admit the evidence.

Jury Selection Issues

Discussion takes place with regard to juror #255415. There being no objection, the Court directs the Jury Commissioner to excuse this juror.

Motion to Preclude Late Disclosed Witnesses, Evidence, Experts and Opinions from the State's 55-57th and Earlier Disclosures

Counsel argue the motion.

With regard to the first portion of the motion, the Court **DENIES** the request to preclude at this time without prejudice. With regard to the forensic consulting solutions portion of the motion, the Court states that it is inclined to preclude Ms. Hinch from testifying at this time. With regard to the log in and out times for the UBS computer, the Court **GRANTS** the motion. With regard to the Dan Jenson portion of the motion, the Court **DENIES** the request to preclude Mr. Jenson. With regard to the Dr. Steven Pitt portion of the motion, the Court **GRANTS** the request to preclude. With regard to the divorce record from 2006 portion of the motion, the Court precludes those in the State's case in chief but if there are any issues that may need rebutting for impeachment purposes, the Court will revisit the issue upon request. With regard to the bank records portion of the motion, the Court precludes the newly disclosed records from April 2 for the reasons set forth on the record. If they are necessary for rehabilitation or impeachment purposes, the Court may revisit whether some of those are able to be used. With regard to the YY photos portion of the motion, the Court will preclude the photos. If there is testimony to require the photos to be used for impeachment purposes, the Court may revisit the issue. With regard to the late disclosed witnesses portion of the motion, the Court **GRANTS** the motion with regard to Greenhow, the Court **DENIES** the motion with regard to Gere and Pryor. With regard to Comback, the Court states that it will take up that issue with Counsel next week. With regard to the custodians of record of Amazon and the State Department, they are not precluded.

The Court authorizes defense counsel to provide the transcript of the audio recording with Mr. Comback to the Court via e-mail. The Court takes that issue under advisement.

Defense Counsel requests that the State provide a proffer about what the witness Gere may say. The Court states that it will not require the State to produce something that has not been produced.

Jury Selection Issues

Discussion takes place with regard to juror #249065. There being no objection, the Court directs the Jury Commissioner to excuse this juror.

Discussion takes place with regard to juror #78 on the list provided by the Jury Commissioner. There being no objection, the Court directs the Jury Commissioner to excuse this juror.

Anonymizer Subpoena

The Court **DENIES** the request to quash the Anonymizer Subpoena.

Disclosure Issues

With regard to the issue of the disclosure provided today, the Court states that if the party does not comply with the rule, the Court will not let the evidence in. If they do comply with the rule, the Court may require a motion.

Status and Scheduling Issues

The Court informs that the Defendant and Counsel shall be present in Court at 8:00 a.m. on Tuesday, May 4.

The Court reaffirms the order that the Defendant shall be dressed out at the Prescott jail.

Court and Counsel discuss haircutting issues for the Defendant.

Court and Counsel discuss the Defendant being restrained in the video conferencing room.

The Court **DENIES** the request with regard to searching the Defendant's cell.

The Court is provided with a copy of the Petition for Special Action. Discussion takes place with regard to the petition.

END TIME: 5:34 p.m.

cc: VS (e)
Jury Commissioner (re: excused jurors)
Dean Trebesch (Contract Administrator) (PD) (e)
Division 6 (under advisement)
YCSO (e)
John Napper, Counsel for Renee Girard (e)
Christopher DuPont, Trautman DuPont PLC, 245 W Roosevelt, Ste. A Phoenix, AZ 85003,
Counsel for Victims Charlotte and Katherine DeMocker